



## THE SCENARIO OF CIVIL WARS AND APPLICATION OF THE RIGHT TO SELF-DETERMINATION

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### Abstract

Civil War is not a present-day issue of law. The world witnessed numerous civil wars in nineteenth and twentieth century. Political factors, socio-economic factors and legal factors or even quest for capturing land are the main instigate of these civil wars. This twenty first century is also witnessing number of civil wars. And most of these civil wars are taking place or have taken place in the middle-east. Whether be these wars are taking place in nineteenth century or twenty first century, one matter is very clear that the technology of the war is constantly changing and simultaneously, the common feature among all these events is that there is the presence of self-determination. And whenever any such secession takes place, it affects the cultural, religious and racial aspects of the society. Besides, the loss of the common people is matter that goes together with the word itself, 'civil war'. Through this research, it will only be tried to find the reasons behind this civil war and self-determination but also the aftermath of them. Because the makeover of the society requires validation as the people in the society has to go through a full set of new rules and customs that sometimes create even management of the socio-economic and political growth of that state.

**Key words:** civil wars, international law, right to self-determination, secession.

### Introduction

Many definitions have been coined for the term "civil war" like "a violent conflict within a country fought by organized groups that aim to take power at the center or in a region, or to change government policies" (Fearon J. 2007). A huge number of incidents of this civil war has taken place in almost all parts of the world. Many of which has been termed as national liberation movements. And surprisingly many of these national liberation engagements were in the African continent and have gained self-government in their respective territories. On the contrary, only the Palestine Liberation Organization which has not attained statehood. The expression "civil wars" is furthermore applied to happening of American Civil War (1861-65) and the Spanish Civil War (1936-39). However, these two events are sometimes argued to be an international war as outside interventions took place. But to make things easier to grasp we would bring the definition of civil war by Malanczuk as he said "civil war" is "a war between two or more groups of inhabitants of the same state one of which may be government" (Malanczuk, 2009).

### Validity of Civil Wars

The American Civil War (1861-65) saw one of the bloodiest civil wars. It was important in its consequences – political, social and military. The parties to the war were the North (the Unionists or the United States and the South (the secessionist or confederacy). By eliminating slavery from the continent and preserving the Union, the civil war ensured that the United States would be a great power and lead the "free world". But this achievement was at a great cost: battle losses cost over 200,000 lives and, from diseases, more than twice as much, a total of nearly 700,000 lives (Wright, 1971), more than all the wars in Europe during that century and only surpassed by the Nigerian Civil War in the twentieth century with a total loss of nearly one million lives (Jorre, 1972). The Spanish Civil War (1936 - 39) originated in internal tensions. On 17 July 1936, a military rebellion started in Africa and spread to the peninsula. Half of the country, the Nationalist rebels led by Generals José Senjurjo, Emilio Mola and Francisco Franco were supported by Germany and Italy. The other half stayed under the control of the legitimate government variously known as Popular Front, Republicans or Loyalists and were supported by the

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Soviet Union and the international brigades. It was a proxy war but no significant international law precedents emerged from this civil war (Thomas, 1971).

Since 1945, the wars that have been fought are mostly civil wars. A civil war may be caused by the desire to form a new state (the Nigerian Civil War 1967-70, the Civil Wars in Sudan 1955-1972 and 1983-2005 and Mali 2012 to date) or fought for the control of a state (Sierra Leone, Liberia and Syria). Ideologies which transcend national frontiers are not only the cause of civil wars as in the case of post-independence crisis in the Republic of Congo (1960-65) but also increase the danger of such civil wars developing into international wars. Furthermore, the politics of coltan (80 per cent of the world's reserves lie in Eastern Congo) which is dense in silicate ideal for digital technologies and the contestation between rebel militias and transnational corporations have fuelled genocidal campaigns in the Democratic Republic of Congo since the surge to remove Mobutu Sese Seko and his eventual removal.

The rules of international law governing the legality of war are discussed under two Latin names: *ius ad bellum* (the rules of international law governing the legality of the use of force by states) and *ius in bello* (the rules by which international law regulates the actual conduct of hostilities once the use of force has begun). The term "international humanitarian law applicable in armed conflict" is being used for *ius in bello*. In this excursus, we shall discuss the scope of *ius ad bellum*: the rules governing the use of force in civil wars. The two principal sources of the *ius ad bellum* since 1945 have been Articles 2 (4) and 51 of the UN Charter. Article 2 (4) of the UN Charter states:

"All members shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

The prohibition in Article 2 (4) above has to be read conjunctively with Article 51 of the UN Charter, the relevant part of which states:

"Nothing in the present Charter shall impair the inherent right of an individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

Article 2 (4) prohibits the use of force against territorial integrity or political independence of another state, irrespective of whether the use of force amounts to war. Any use of force is prohibited if it cannot be justified by reference to the right of self-defence recognised in Article 51 of the Charter. The right of self-defence permits only the use of force that is necessary and proportionate to the danger (Brownlie, 1963; Brownlie, 2003). A more complicated issue is the lawfulness of intervention by other states in a civil war. Two scenarios are possible:

- (i) Other states supporting insurgents; and (ii) other states supporting established authorities.
- (i) Other states supporting insurgents

In international wars, the rules of neutrality give clear guidance on the kinds of assistance that can be provided by neutral states. The rules are not so clear in civil wars. As a general rule, foreign states are forbidden to give help to insurgents in a civil war. The General Assembly Resolution 2131 (XX) declares that:

"no state shall organize, assist, finance or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."

The rule stated in this resolution – repeated in later resolutions – has been reaffirmed by the International Court of Justice in *Nicaragua v USA*. In that case, it was held that the United States had broken International law by aiding the contras who were rebelling against the government of Nicaragua. It emphasized that participating in a civil war by "organizing or encouraging the organization of irregular forces or armed bands ... for incursion into the territory of another state" was not only an act of illegal intervention in the democratic affairs of a foreign state but also a violation of the principle of prohibition of force. The Court held that the mere supply of funds to the contras while an act of intervention in the internal affairs of Nicaragua did not in itself amount to use of force.

The Court also recognized the common Article 3 of the four Geneva Conventions of 1949 as an expression of fundamental principles of humanitarian law. Article 3, which protects civilians, members of the armed forces who have laid down their arms 'hors de combat' by sickness, the wounded and so on, applies to all civil wars. The problem is that it is difficult to distinguish between civilians and combatants since civil wars are often fought by guerrillas and irregular forces. The Second Protocol to the 1949 Conventions, signed in 1977, tackles this problem by extending the laws of war to civil wars. According to Article 1 (1), the Second Protocol to the 1949 Conventions applies to "armed conflicts"

“which took place in the territory of the High Contracting Party between its armed forces and dissident armed forces or other armed groups under responsible command ...”

It must be noted, however, that the term “armed conflicts” does not apply to “situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of similar nature” (Article 1 (2) of the Second Protocol to the 1949 Conventions).

(ii) Other states supporting established authorities

Two theories struggle for ascendancy. According to the first theory (or the ‘traditional view’), help given to established authorities in a civil war is always legal. This is based on the argument that the government is the agent of the state and until it is overthrown, it remains competent to ‘invite’ foreign troops into the state’s territory and seek other forms of foreign help. The rationale of “invitations to intervene” is that the consent of the established authorities does not conflict with the concept of sovereignty. However, this theory has been used to justify military intervention by two super powers: the Soviet Union in Hungary (1956), Czechoslovakia (1968) and Afghanistan (1979); and the United States in the Dominican Republic (1965) and Granada (1983).

The second theory simply states that the traditional view or “invitation to intervene” is open to abuse as we shall see in one of the civil wars discussed below.

### **Civil Wars in various regions**

There is no sole theory explaining civil wars, that is, wars approved on mainly between two or more groups of population of the same state one of which may be government. But there are lessons to be learnt from the post-independence civil wars in Congo, Nigeria and Sudan; and the wars in Kosovo and Mali. To these wars we now turn.

#### ***Congo***

The first insight from Congo’s post-independence crisis is that the traditional view that help given by a foreign state to the established authority in case of internal conflict is always legal is subject to abuse. In May 1960, the Movement National Congolais or MNC Party, a nationalist movement led by Patrice Lumumba, won the parliamentary elections in Belgian Congo. The party appointed Lumumba as Prime Minister. The parliament elected as President Joseph Kasavubu of Alliance des Bakongo (ABAKO) party. The Democratic Republic of Congo attained independence on 30 June 1960. On 5 September 1960, Kasavubu dismissed Lumumba from office. Lumumba declared Kasavubu’s action unconstitutional and a political crisis ensued. Joseph Mobutu who has been appointed chief of the new Congo army by Lumumba took advantage of the leadership crisis. With financial support from the United States and Belgium, Mobutu not only paid his soldiers privately but also staged a successful coup d’état which neutralised both Kasavubu and Lumumba. This was during the period of Cold War and the aversion of the Western powers to communism and leftist ideology influenced their support for Mobutu who was seen to be anti-communist and Lumumba pro-communist. On 17 January 1961 Katanga forces and Belgian paratroopers kidnapped and executed Patrice Lumumba, the democratically elected Prime Minister of Congo. In January 1963, the attempt of the Katanga province which was rich in mineral resources to secede was crushed with the assistance of UN forces. Thus, for four decades until he was ousted, Mobutu plundered the treasury and murdered anyone who opposed him.

The political economy of the civil wars that were the direct result of the post-independence crisis must now be examined. The Democratic Republic of Congo (DRC) is rich in mineral resources: it is the world’s largest producer of cobalt ore and a major producer of uranium, copper and industrial diamonds. More than 30% of the world’s diamond reserves are in the DRC. It is also estimated that 80% of the world’s reserves of coltan lie in the Eastern DRC. Tantalus, which is extracted from coltan, is used as a high-charge conductor for mobile phones and a variety of other products associated with digital technologies. The insatiable global demand for digital technologies drives the trade in coltan between foreigners and their Congolese collaborators – the local militias – and has turned coltan into what Mantz calls “the blood diamond of the digital age” (Mantz, 2008). Thus, coltan is traded for hard currency which in turn is used to buy arms for itinerant warlords who feature in the civil wars fought in the DRC (Smith, 2011). Clausewitz reminds us, “War is not merely a political act, but a real political instrument, a continuation of political commerce, a carrying out of the same by other means” (Clausewitz, 1968).

The Rwandan Genocide began on 6 April 1994 a few hours after the plane of the Hutu President of Rwanda was shot down at Kigali Airport killing the President. Over a period of 100 days, the Hutu killed between 500,000 and 1 million Tutsi. More than 100,000 sought refuge in neighboring Congo. The Tutsi Rwanda Patriotic Front restarted their offensive and took control of Rwanda by mid-July of the same year. The villainous Tutsi-led Rwandan Army was to play a decisive role in two civil wars in Congo.

The first civil war (the anti-Mobutu civil war) was fought from 1996-1997 by a coalition of Rwandan and Ugandan armies with longtime opposition figures led by Laurent Désiré Kabila with two objectives:

to control the mineral resources of Congo and to drive Mobutu out of Zaire (as Congo was then called). In May 1997 Mobutu fled the country and Kabila marched into Kinshasa, the capital, naming himself the President and reverting the name of the country to the Democratic Republic of Congo. However, a few months later, President Kabila, fearing the Tutsi led Rwandan army who were running his army were plotting a coup against him in order to give the presidency of Congo to a Tutsi who would report directly to the President of Rwanda, asked Rwanda army officers to leave. They did not leave the DRC as directed by Kabila but only retreated to Goma where they launched a new Tutsi-led movement called Reassemblement Congolais pour la Democratie (RCD) to fight Kabila, their former ally. Again, Uganda, the erstwhile Kabila ally also formed another rebel movement called Movement for the Liberation of Congo (MLC).

The second civil war (the anti-Kabila civil war) was started in 1998 by the RCD and the MLC along with Rwanda and Uganda troops. Angola, Zimbabwe and Namibia were involved militarily on the side of the Congolese Government. Laurent Kabila was assassinated in 2001 and was succeeded by his son, Joseph Kabila. The Kivo conflict in the eastern DRC with a vast deposit of coltan was ignited by Laurent Nkunda, a former member of the RCD in Goma, who defected from the RCD with troops loyal to him and formed the National Congress for the Defense of the People (CNDP), again backed by Rwanda to launch an armed rebellion against the Congolese government. While Mobutu's Congo has been a Cold War ally against communism in Africa, transnational corporations have created a new role for Joseph Kabila in Congo: a violent and unequal ally in global digital revolution.

### ***Nigerian Civil War 1967-70***

Nigeria, like Congo, attained independence in 1960 (on 1 October) as a Federal Government which comprises the Western, the Eastern and the Northern Regions. At the 1958 Constitutional Conference held in London, the premiers of Western and Eastern Regions believed, as the British Secretary of State for the Colonies had intimated, that the creation of more states would redress the balance between the North and the South. The Hausa dominated Northern Region opted for confederation with power to secede while the Western Region opted for classical federalism and Eastern Region for quasi-federalism. But the Secretary of State for the Colonies indicated that if the demand for more states was insisted upon either before or after the election in 1959, the British government had no alternative but to postpone the election. Professor T.O. Elias (who later became the President of the International Court of Justice) reiterated that the southerners, when they realized that more states were not going to be created agreed to confederation with power to secede but this was rejected by the British government (Elias, 1967). Had the southerners realized that federalism in a multi-ethnic society with a region like the North which could override the South could produce a winner-takes-all situation where losers become hostages to the winning faction, they would have opted for confederation with power to secede ab initio. Unfortunately, the southerners were outmaneuvered.

After independence, the three principles of federalism, viz (i) separateness and independence of each

Government; (ii) mutual non-interference or intergovernmental immunities; and (iii) reasonable balance between the units of the federation (Wheare, 1963) were flouted by a 'Federal Government' dominated by Northerners. There was a breakdown of law and order in Western Region and Lagos. Chief Obafemi Awolowo, the leader of the Yoruba, a former Premier of Western Region and one of the architects of Nigeria's independence, was languishing in prison.

The army intervened in January 1966 immediately Mr. Harold Wilson (later Lord Wilson) the then Prime Minister of the UK, left Lagos after the Commonwealth Prime Ministers' Conference on H.M.S. 'Fearless'. Sir Ahmadu Bello (the Premier of Northern Region), Sir Abubakar Tafawa Balewa (the Federal Prime Minister), Chief S.L. Akintola (the Premier of Western Region) and Chief Festus Okotiebo (Minister of Finance) were killed in a coup d'état led by Ibo army officers. The army introduced a unitary government under the leadership of Major-General J.T.U. Aguiyi Ironsi.

In July 1966, the Northern army officers retaliated in a coup led by Col. Yakubu Gowon. General Aguiyi Ironsi, the head of the unitary government, and Col Adekunle Fajuyi, the Military Governor of Western Region, were killed. The pogrom committed by Northerners on Ibos living in the North and in the armed forces compelled the Ibos (Biafrans) to secede. A civil war raged from 1967 to 1970. About one million Nigerians (civilians and soldiers) died. It is worthy of note that if crude oil were not in the East (Biafra) in commercial quantity, the secession might not have been challenged and would have succeeded. Nigeria received military assistance from the Soviet Union. And yet, President Lyndon Johnson of the United States refused to intervene. Nigeria is now the largest producer of crude oil in Africa and the sixth largest producer in the world. Its crude oil ('Bonny Light') is the second best in the world, second only (in purity) to Libya's crude oil.

The Ibos (Biafrans) led by Col. C.O. Ojukwu lost the war. Their secession attempt failed but this was not the case in Sudan.

### ***Sudan***

The first civil war was caused by national oppression, undemocratic, authoritarian state system and imperial domination. The peace accord – the Addis Ababa Agreement – signed in 1972 did not last long before General Gaafar Nimieri, the then strongman of Sudan, found inroads into it and finally abrogated it and introduced Sharia law in 1983 into a country comprising Nubis and Arab Muslims to the North and Christians and animists to the South.

The second civil war was ignited in 1983 following the government's islamization policy. In 2004 Chad brokered negotiations in N'Djamena, leading to April 8 2004 Humanitarian Ceasefire Agreement. A final treaty was signed on 9 January 2005 in Nairobi giving the South autonomy for six years followed by a referendum on secession and stating that income from oilfields should be shared evenly between the North and the South. A referendum was held and South Sudan voted overwhelmingly for secession. Unlike Congo and Nigeria, the bid for secession succeeded in Sudan. South Sudan is the world's 193rd state and Africa's 55th.

### **'Blood Diamonds' and the Civil Wars in Liberia and Sierra Leone**

The purpose of including Liberia and Sierra Leone as two theatres of civil war is to highlight the fact that ideologies which transcend national frontiers are not only the root cause of post-independence civil war in Africa but also make them frequent and increasing the danger of such civil wars turning into international wars.

In 1980, a military coup in Liberia led by Master Sergeant Doe of Krahn ethnic group, overthrew the Americo-Liberian government killing President William R. Tolbert Jr. and most of the Americo-Liberian government officials. Doe formed the People's Redemption Council (PRC) to rule. Like Mobutu, Doe was regarded as a Cold War ally and received significant backing from the United States government. Doe adopted a new Constitution in 1985 and was elected President in subsequent elections that were internationally condemned as fraudulent. In 1989, the National Patriotic Front of Liberia led by Charles Taylor, a former employee of President Samuel Doe's government, launched an insurrection supported by neighbouring countries such as Burkina Faso and Côte d'Ivoire (Gershoni, 1997). By September 1990, Doe was captured and killed. A peace deal led to Taylor's election as president in 1997.

The brutal civil war in Liberia played a vital role in the outbreak of fighting in Sierra Leone, a country which relies on mining of diamonds for its economic base. Taylor received help from Foday Sankoh, the leader of the Revolutionary United Front (RUF) in Sierra Leone. It was reported that Taylor instigated the RUF to attack the bases of Nigerian dominated peacekeeping troops in Sierra Leone who were opposed to his tribal movement in Liberia (Gershoni, 1997).

Under Taylor's leadership, Liberia became a pariah state due to his use of blood diamonds and illegal timber exports to fund the RUF in the Sierra Leone Civil War (Richards, 2003). Between 1989 and 1996 the first civil war in Liberia had claimed the lives of more than 200,000 Liberians and displaced a million others into refugee camps in neighboring countries. The Second Civil War in Liberia began in 1999 when insurgents named Liberians United for Reconciliation and Democracy based in the northwest of Liberia launched an insurrection against Taylor. In March 2003, a second group of insurgents, the Movement for Democracy in Liberia, attacked from the southeast. Taylor resigned and went into exile in Nigeria where he was handed over to the Special Court for Sierra Leone for trial in The Hague.

### ***Kosovo***

Since Tito's death in 1980, the Socialist Federal Republic of Yugoslavia formed under Tito's Communist partisan army had been plagued by surging nationalism, separatism and inter- and intra-republican strife. Two examples will suffice: (i) the desire on the part of Slovenia, Croatia and Bosnia-Herzegovina and Macedonia to secede; and (ii) Serbia's treatment of two million Albanians forming 90% of the Autonomous Province of Kosovo.

The Kosovo War was an armed conflict in Kosovo which involved Yugoslav forces and Albanian separatist forces (KLA) and Nato between 1998 and 1999. On 10 June 1999, the Security Council adopted a resolution 1244 (1999) which authorised the creation of an international military presence subsequently known as "KFOR" and an international civil presence (the United Nations Interim Administration Mission in Kosovo "UNMIK") and laid down a framework for the administration of Kosovo. On 17 November 2007 elections were held for the Assembly of Kosovo, 30 municipal assemblies and their respective mayors. The Assembly of Kosovo held its inaugural session on 4 and 9 January 2008. On 17 February 2008, in Pristina, the capital of Kosovo, the Assembly promulgated a declaration of independence. Two questions arise from this declaration:

(1) Is the declaration of independence in accordance with international law? Put differently, has the population of Kosovo the right to create an independent state as a manifestation of a right to self-determination? (2) What are the legal consequences of the declaration? We shall return to these questions later in the section on the right to self-determination and secession but first we must discuss the conflict in Mali, the Arab Spring and the civil war in Syria.

### **Mali**

Mali attained independence from France in 1960 and was one of the earliest nations to make a declaration for human rights. After a long period of one-party rule, a coup d'état in 1991 led to the enactment of a Constitution and ushered in a multi-party system (Imperato, 1989). On 22 March 2012, a group of junior army officers staged a coup d'état, seized the presidential palace, dissolved the government and suspended the Constitution. On 6 April 2012, Tuareg insurgents called the National Movement for the Liberation of Azawad (MNLA) declared the secession of a new state, Azawad, from Mali. Shortly the Islamist groups including Ansar Dine and Al-Qaeda in the Islamic Magreb (AQIM) who had helped MNLA defeat the government turned on the Tuareg and took control of the North with the goal of implementing Sharia Law in Mali. The oblique consequence of the Libyan crisis of 2011 was the outflow of weapons to the Sahel region which included Northern Mali. On 11 January 2013, the French Armed Forces, with the support of British troops, intervened and by 30 January they had retaken the North from the insurgents, at least, for the time being.

### **Arab Spring and Syria**

The Arab Spring – an allusion to the Revolution of 1848 which is sometimes referred to as “Springtime of the People” and the Prague Spring in 1968 - refers to a wave of protests, demonstrations and civil war which started in Tunisia on 18 December 2010 and swept, like wildfire, through the Arab world. Rulers in Egypt, Tunisia and Yemen were forced from power. Mu' ammar Qadhafi was not only overthrown on 23 August 2011 but was also killed. Uniform techniques of civil resistance, demonstrations and the use of social media (made possible by tantalus and the political economy of violence in the Democratic Republic of Congo chronicled above) were used. There were major protests in Algeria, Iraq, Jordan, Kuwait, Morocco and Sudan; and Western Sahara. Minor protests took place in Djibouti, Lebanon, Mauritania, Oman and Saudi Arabia. The fons et origo of the Arab Spring have been traced to numerous factors. Boyes (2012a) argued that the drawing up of the map of the Middle East after the collapse of the Ottoman Empire by Britain and France – the Sykes-Picot Agreement of 1916 – which sought to protect minorities in the region (e.g. the Alawites in Syria) by putting them in power in the newly created States was partly responsible. He, however, observed that the uprisings of 1848 and the toppling of communism in 1989 were inapplicable to the Arab World because the idea “that greater political choice and free speech could swiftly transform the Middle East” was “a Western mirage in the desert” (Boyes, 2012b). It has also been suggested that factors such as dictatorship or absolute monarchy, human rights violations and corruption are the causes and that Arab Spring triggered the Syrian Civil War (Manhire, 2012; Noueihed, 2012). These suggestions were, at best, half-truths. The whole truth could be found in “the confusing and often violent geopolitics of the Middle East” (Freedman, 2008). Lawrence Freedman, a distinguished historian of contemporary military and political strategy, contends that “the first radical wave” in the Middle East was led by Arab nationalism and its first leader was Gamal Abdel Nasser who became Egypt's leader after the coup to overthrow King Farouk in 1952. Ahmed Ben Bella was also a leading figure in the postwar Arab nationalist fight against colonialism who became the first president of newly independent Algeria on 1 July 1962 (Obituary, 2012a). Since then, many of the current crop of Arab leaders emerged out of the nationalist tradition and the influence of first wave remains but that it has lost its edge a long time ago.

According to Freedman, the “second radical wave” is led by Islamists and the Muslim Brotherhood formed in Egypt in 1928 as a genuine mass movement and founded on a belief in the supremacy of Islamic law combined with a populist anti-colonialism. Freedman argues that many Islamic movements operating today are linked to books of its leading ideologist Syed Qutb who was executed in 1966 because he declared illegitimate any regime not based on Islamic law. Qutb's ideas were so incendiary that the Muslim Brotherhood, though they believed in them, had to denounce them. Nasser used an assassination attempt to ban the Brotherhood. Anwar Sadat, Nasser's successor, unwittingly removed the restraint (though not the formal ban) on the Brotherhood. This enabled them to open mosques, schools and banks. They were preparing for government. By 1978 Sadat saw the potency of the Islamic movement he had helped to unleash, and tried to rein it in but failed. (Solomon E., 2013)

The cause of the Syrian civil war was not the Arab Spring just as the presence of oxygen is the condition, not the cause, of a fire. The cause of the Syrian civil war is Islamism, the “second radical wave” in the Middle East, which the Algerian, General Mohammed Lamari, fought against for over five decades and stopped from taking power in 1992 leading to a long civil war in Algeria (Obituary, 2012b).

Syria was established as a French mandate after World War I and attained independence in April 1946. Between 1958 and 1961 Syria entered into a brief union with Egypt to form the United Arab Republic with Nasser as President and Cairo as capital. This union was terminated by a military coup.

Hafèz al-Assad took power in 1971 and an attempt to assassinate him in 1979 was brutally crushed. Bashar al-Assad took over power after his father's death in 2000. Since March 2011, Syria has been embroiled in a civil war backed by Russia, China and Iran. (Syria signed a pact with Soviet Union in November 1956 providing a foothold for the Russians in the Middle East.) Arms are pouring into Syria for the government and insurgents and jihadists from all over the Arab world as the civil war intensifies. In November 2012, an umbrella organization of opposition groups known as the National Coalition for Syrian Revolutionary and Opposition Forces was recognized as 'the legitimate representatives of the Syrian people' by Member States of the Gulf Cooperation Council and by France, Turkey, the United Kingdom, the Arab League and the European Union. Al-Nusr Front, a group of fighters who were credited with significant victories in some battles was declared a terrorist organization by the United States.

### ***Right to Self-determination of people***

The principle of self-determination which, we are told is "simply loaded with dynamite", has been traced to the Declaration of Independence of the United States of America of 4 July 1776 and to Lenin and the Bolsheviks and has evolved into peoples' right to self-determination (Shivji, 1991; Thürer and Burri, 2012).

We can think about three stages in the development of the right to self-determination: (i) the World War I period as during World War I when President Woodrow Wilson popularized the theory of self-determination but self-determination did not form part of the Covenant of the League of Nations and was, therefore, a political rather than a legal concept; (ii) the decolonization phase where the illegitimacy of colonialism and the rights of those colonized by distant Western powers to become independent states were articulated; and (iii) the post-colonial phase where international law guarantees to individuals and non-colonized people a broader range of human rights including meaningful self-determination but excluding the right to independent statehood. The "principle" of self-determination was mentioned thrice in the 1945 Charter of the United Nations.

It is worthy of note that neither self-determination nor minority right is mentioned in the Universal Declaration of Human Rights 1948. Under the moral and political imperatives of decolonization, the vague "principle" of self-determination evolved into the "right" of self-determination. The evolution was demonstrated by the General Assembly's 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples ("Declaration on Colonial Independence"). It declares that:

"All people have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

It also maintains that

"Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence."

Again, the General Assembly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations" (Declaration on Friendly Relations) states, inter alia:

"Every State has the duty to promote, through just and separate action, realization of the principles of equal and self-determination of peoples ..."

The Declaration on Friendly Relations offers no definition of "peoples". In the same vein, the Final Act of the Conference on Security and Co-operation in Europe (CSCE) – renamed the Organization for Security and Co-operation of Europe (OSCE) in 1994 – adopted in Helsinki by 35 European States, Principle VIII states:

"By virtue of the principles of equal rights and self-determination of peoples, all peoples have the right, in full freedom, to determine, when as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development."

However, Principle IV of the Final Act stipulates that "[t]he participating States will respect the territorial integrity of each of the participating States". Thus, the scope of the principles of territorial integrity is confined to the sphere of relations between States.

The oppression of nations and nationalities discussed above (Nigeria, Sudan, Kosovo and Syria) has led to devastating civil wars and gross violations of the rights of peoples to self-determination. There are two aspects of self-determination: the internal and the external aspects. Internal self-determination is the right to an authentic self-government. External self-determination for colonial peoples ceases to exist under international law once it is implemented, that is, once the people have attained self-government. But internal self-government, unlike external self-determination, is an ongoing right of the people to choose its own political and economic regime. (Solomon E., 2013)

This right to internal self-determination exists under treaty law by virtue of Article 1 of the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) which entered into force in 1976 and were ratified by over 110 countries. The first Article of both Covenants is identical.

#### Article 1

- “1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their own natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

In a similar vein, Article 20 of the African Charter on Human and Peoples’ Rights 1981 sets forth the right to self-determination:

- “1. All peoples have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their own political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed people shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.”

There are other treaties on peoples’ right to self-determination such as the Universal Declaration on the Rights of Peoples 1976 (The Algiers Declaration) which has been described as “a work of high idealism and a fairly high level of abstraction” which was produced by an ad hoc gathering of lawyers, political scientists, politicians and others and did not reflect the views of governments (Brownlie, 1988) and the American Declaration of Rights and Duties of Man promulgated by the Organization of American States.

There are two relevant questions: (1) Does the ‘right’ to self-determination exist and, if it exists, who are the holders of the ‘right’? (2) Does the right to self-determination encompass the right to secede?

The answer to the first strand of the first question – whether or not the right exists is that since the 1970s judicial and quasi-judicial bodies have reconceptualised the right to self-determination. It is no longer a right of colonies to independence but a right of peoples to take part in decisions affecting their future. Although the International Court of Justice used the term “principle” rather than “right” in the Western Sahara Advisory Opinion, the Namibia Advisory Opinion and the Case Concerning Frontier Dispute (Burkina Faso v Mali), the Court in its recent pronouncements has recognized the peoples’ “right” to self-determination. In Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the Court referred to the “right” of people to self-determination and observed that “[T]he existence of a ‘Palestinian people’ is no longer in issue.”

In the Kosovo Advisory Opinion, the Court stated:

- “During the second half of the twentieth century, the international law of self-determination developed in such a way to create a right of independence for peoples of non-governing territories and peoples subject to alien subjugation, domination and exploitation.”

The answers to the second strand of the first question – who are the holders of the right to self-determination – can be gleaned from the UN Charter and the Kosovo Advisory Opinion. The UN Charter attaches the “right to self-determination” to “peoples” and the United Nations Secretariat defines “peoples” as meaning “group[s] of human beings who may or may not comprise States or Nations” and the Kosovo Advisory Opinion put a gloss on “peoples”, viz. “peoples of non-governing territories or

peoples who are subject to alien subjugation, dominated or exploited". The Palestinians, the Kosovars and East Timorese are "peoples" as defined.

The second question is whether the right to self-determination encompasses secession. There are two sides to self-determination: (i) its democratic appeal; and (ii) its tendency to kindle volatility, disorder and even dismembering of a state. The right to internal self-determination is a right conferred on racial and religious groups in a state but the rights of racial and religious groups are subordinate to the principle of territorial integrity and political unity of the state. The question whether or not peoples' right to self-determination includes the right to declare a state of independence, short of secession, was evaluated by the International Court of Justice in the Kosovo Advisory Opinion.

The question put to the Court by the General Assembly was formulated in the following terms:

"Is the unilateral declaration of independence by the Provisional Institution of Self-Government of Kosovo in accordance with international law?"

The Court noted that its opinion was required on whether or not the declaration of independence was in accordance with international law and that question did not ask about the legal consequences. Thus, the declaration of independence was separated from its legal consequences. Twelve countries participated in this proceeding, viz., France, Norway, Cyprus, Serbia, Argentina, Germany, the Netherlands, Albania, Slovenia, Switzerland, Bolivia, the United Kingdom, and the United States of America and, of course, Spain because of the Catalonia Declaration of Independence alluded to later; and Kosovo, the authors of the declaration of independence, submitted a written contribution. After the declaration of independence, the Republic of Serbia informed the Secretary-General that the declaration "represented a forceful and unilateral secession of a part of the territory of Serbia, and did not produce legal effect in Serbia or in the international order.

The Court determined that the "people" of Kosovo were the authors of the declaration and then proceeded to consider whether they had the right to make the declaration and whether such declaration violated international. In resolving these issues, the Court reiterated that there were numerous instances of declarations of independence in the eighteenth, nineteenth and early twentieth century's: sometimes seriously contested but resulting in the creation of a new state and at others it did not. The Court contended that the State practice during this period pointed to the conclusion that international law contained no prohibition of declarations of independence. The Court noted that in the second half of the twentieth century the international law of self-determination developed from a right of self-determination for non-self-governing territories and peoples subject to alien overthrow and misuse. The Court added that many states came into existence as a result of the exercise of the right but there were declarations of independence outside this context. The Court concluded that these latter cases did not point to the emergence in international law of a new rule prohibiting the making of declaration in such cases. The Court, however, noted that some participants in the proceedings have contended that a prohibition of unilateral declarations of independence was implicit in the principle of territorial integrity enshrined in the UN Charter. Article 2 (4) of the Charter provides that:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in a manner inconsistent with the Purposes of the United Nations."

The Court also noted Principle IV of the Helsinki Final Act but observed that the principle of territorial integrity is confined to the sphere of relations between states. The Court, therefore, concluded that the announcement of independence on 17 February 2008 did not violate international law and that the Security Council resolution 1244 (1999) did not bar the authors of the declaration from declaring independence from the Republic of Serbia. Hence, the declaration of independence did not violate Security Council resolution 1244 (1999).

The domination of nations and nationalities and the asymmetric relationships foisted upon newly independent countries by their erstwhile colonial rulers (in Nigeria between the Hausa/Fulani and the Yoruba, Ibo and others; in Rwanda between the Hutu and the Tutsi, to mention a few) have led to devastating wars in Congo, Nigeria, Sudan, Liberia, Sierra Leone and Kosovo (discussed above) and gross violations of peoples' rights to self-determination. In Katanga (Congo) and 'Biafra' (Nigeria) the secession attempts failed but in Bangladesh in 1971 and South Sudan in 2011 the attempts succeeded. The Kosovo Advisory Opinion is that the declaration of independence in Kosovo does not violate international law but secession is not an issue in that opinion. And yet, Kosovo is not the only nationality or group seeking to effect secession in Europe or other parts of the world. There are other

groups or nationalities attempting to effect secession from other states such as Catalonia (from Spain), Scotland (from the United Kingdom), South Ossetia (from Georgia), Nagorny Karabakh (from Azerbaijan), 'Biafra' (from Nigeria) and Azawad (from Mali).

The position of the CSCE/OSCE is that such crises in Europe could not be resolved by separatism but by peaceful negotiation respecting the territorial integrity of the states from which they are seceding. This position was assailed by Hannum in the following passage:

“The principle that borders should not be altered except by mutual agreement has been elevated to a hypocritical immutability and contradicted by the very act of recognizing secessionist states. New minorities have been trapped, not by any comprehensive legal principle, but by historical administrative borders drawn by undemocratic government” (Hannum, 1993).

The view of the International Court of Justice on Kosovo is that general international law contains no prohibition of declaration of independence. Furthermore, it is also safe to assert that secession is neither recognized nor proscribed in international law. Cassese argues that the Declaration on Friendly Relations ranks at the level of customary law: that State practice in the UN from the 1970s evidences that the provision granting internal self-determination to racial groups persecuted by central government has become part of international law. He, however, reiterates that the Declaration clause relating to religious groups has not matured into a customary rule since any State practice since 1970 supported such evolution. In other words, groups seeking radical transformation of the whole society do not come under the international law of self-determination. Cassese argues that the preparation work on the Declaration of Friendly Relations warrants the contention that secession is implicitly authorized by the Declaration when one of the following conditions exists:

“The central authorities of a sovereign State persistently refuse to grant participatory rights to a religious or racial group, grossly and systematically trample upon their fundamental rights, and deny the possibility of reaching a peaceful settlement within the framework of State structure.”

It is submitted that such conditions were instantiated in the preamble paragraphs and the operative part of the Kosovo declaration of independence of 17 February 2008 which definitely prejudiced the Kosovo Advisory Opinion stating that the declaration does not violate international law but stopping short of deliberating on secession which was not within its remit. Judge Cañado Trindade, in a separate Opinion, went a vital step more by arguing in favor of unilateral secession: that the current evolution of international law and international practice of States and international organizations provides support for the exercise of the right to self-determination by people under permanent adversity or in the case of systematic oppression and subjugation.

### Summary and Conclusions

The civil wars mentioned above from the American Civil War (1861-65) to the ongoing civil war in Syria support the goal that there is no theory of civil war because wars do not follow a exacting pattern. Master Tzu, writing in classical Chinese, a halfway between poetry and prose, said: “War has no constant dynamic; Water has no constant form” (Tzu, 2002). In contrary, a civil war precedes suo motu, that is, it has its own drive. The post-independence crisis of Congo was driven by philosophy but not the two civil wars and the Kivo conflict which were driven by greed, the command of the vast mineral resources of the Congo or, in Clausewitzian terms, “the carry[ing] out of [commerce] by other means” (Clausewitz, 1968). The civil wars in Nigeria, Sudan, Kosovo and Mali were wars of secession while the Arab Spring and the civil wars in Libya, Tunisia and Syria were driven by Islamic fundamentalism: the quest for political power for the radical transformation of the whole society.

The technology of war has been fundamentally distorted since. The effect of the civil war in Syria is complicated to predict because of the pressure of archipelago interests, namely, Russia and China (two BRIC states), Iran and the United States and the EU in Syria. Switch to democratic system in Egypt, Libya and Tunisia is a debatable point and the consequences of the Arab Spring in Saudi Arabia are too horrific to think. Recent events in South Ossetia (Georgia), Catalonia (Spain) and Scotland (the United Kingdom) show convincingly that secession attempts will not go away in a hurry. In order to avoid civil wars of secession, we need to rethink the peoples’ right to self-determination to justify secession in cases of unremitting persecution of a racial or religious group once it is clear that attempts to achieve internal self-determination have failed. This rethinking is not only practicable but also sought-after.

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The civil wars of the twenty-first century are not different from those of the previous centuries. The object of this article is to analyse the causes and legality of civil wars and assess critically the scope of peoples'™ right to self-determination in international law with a view to determining whether the right (as it stands) can be used by a racial or religious group in a state to effect radical transformation of the whole state or to justify secession from the state. Finally, the feasibility and desirability of reconceptualising peoples'™ right to self-determination to justify secession in case of unremitting persecution, when it is clear that attempts to achieve internal self-determination have failed, are evaluated. Discover the world's research. 20+ million members. The right of self-determination was legalised, as opposed to being a political right, in the post-1945 world after the creation of the UN in general and after the 1960s in particular. This was due to several factors among which is the UN Charter itself, which has undoubtedly given rise to a customary rule of international law, and several UN Resolutions that have specifically addressed the issue of self-determination. 11 Judicial Rulings There are several judicial authorities concerning the right of different peoples to self-determination. Self-determination is the principle in international law that nations have the right to freely choose their sovereignty and international political status with no external compulsion or external interference. By extension the term self-determination has come to mean the free choice of one's own acts without external compulsion.[4][5]. Contents. 1 History. After the American Civil War and with increasing capability, the United States government did not accept self-determination as a basis during its Purchase of Alaska and attempted purchase of the West Indian islands of Saint Thomas and Saint John in 1860s, or its growing influence in the Hawaiian Islands, that led to annexation in 1898. Self-Determination Betty Miller Unterberger The principle of self-determination refers to the right of a people to determine its own political destiny. Beyond this broad definition, however, no legal criteria determine which groups may legitimately claim this right in particular cases. Self-Determination. Betty Miller Unterberger. The principle of self-determination refers to the right of a people to determine its own political destiny. Beyond this broad definition, however, no legal criteria determine which groups may legitimately claim this right in particular cases. The right to self-determination has become one of the most complex issues facing policymakers in the United States and the international community at large. Thus, the Civil War clearly determined the official policy of the United States toward self-determination. The United States in effect denied the right of communities within a constituted federal union to determine their allegiance, and that denial had been enforced by military power. Clearly, the doctrine of national sovereignty, supported by the principle of nonintervention, had officially and unequivocally taken precedence over the concept of self-determination. This official view also influenced the policy of the United States in regard to the use of the plebiscite as a means of settling questions of sovereignty and self-determination. For example, Secretary Seward adamantly opposed a plebiscite on the abortive cession of the West Indian islands of St. Thomas and St. John in 1868.